IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24843 of 2005
With
SPECIAL CIVIL APPLICATION No. 24844 of 2005
To
SPECIAL CIVIL APPLICATION No. 24859 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NITINKUMAR MOHANBHAI CHAUHAN & 15 - Petitioner(s)

Versus

HIMATNAGAR MUNICIPALITY & 3 - Respondent(s)

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Appearance :
MR YN RAVANI for Petitioner(s) : 1,
MR VH PATEL FOR HL PATEL ADVOCATES for Respondent(s) : 1,
MR SIRAJ GORI, AGP for respondent(s) : 2 - 3.
Respondent : 4 party-in-person.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/02/2006

ORAL JUDGMENT

1.Rule. Learned advocate Shri Patel waives service of notice of rule on behalf of respondent No.1 and learned AGP Shri Gori waives service of notice of rule on

behalf of respondent Nos.2 & 3. Respondent No.4 is personally present in court and he waives service of notice of rule.

2. In this group of petitions, the petitioners have challenged the action of the respondent authorities in sealing the shops of the petitioners situated in a commercial complex of land bearing survey No.51-2-9 paiki plot No.1 of Himatnagar. The petitioners have prayed for quashing the order dated 9th December 2004 passed by the District Collector, Sabarkantha, under section 6(B) of the Town Planning Act as well as the order dated 18th May 2005 passed by the Secretary, Urban Development and Urban Housing Department, Government of Gujarat by which the order of the Collector was upheld.

3. The entire controversy is revolving around a commercial complex built on the above mentioned land. The petitioners have purchased individual shops from the builder who is respondent No.4 in the present petition. As many as 17 shops have been occupied. The petitioners have been doing their small business from such shops since the year 2003. The authorities are of the opinion that the construction of the entire building is not according to the plan passed. There

are other objections to such construction. It is urged that the construction has been carried out in the margin land, that sufficient parking space is not provided for, that the area of construction exceeds the permissible limits and even otherwise, there are other areas where the construction does not conform to the plans passed.

4. Learned advocate Shri Ravani for the petitioners has submitted that ultimately the petitioners are desirous of finding a permanent solution and that therefore instead of raising contentions with respect to the power of the respondents to evict the petitioners without individual notices to them, the petitioners would like to approach the authorities for regularisation of the construction in question. After some discussion at the Bar, he has indicated that the petitioners as well as respondent No.4 herein who continues to be the owner of unallotted remaining 23 shops of the complex would be making a joint representation to the Town Planning Committee of Himatnagar. He submitted that such representation will be made shortly. Revised plans will be submitted and regularisation of the existing construction will be prayed for. He submitted that 17 shop owners had been

doing small business since 2003 and until such time that the authorities examine the representation of the petitioners and respondent No.4 herein, seals may kindly be removed. He agreed that whatever decision is taken on the representation to be made as mentioned hereinabove, would jointly bind the petitioners as well as respondent No.4, of course, subject to further recourse as may be available under the law.

5. Learned advocate Shri Patel for the Himatnagar Municipality pointed out that the construction carried out is not in accordance with the rules and regulations and that the Municipality had, therefore, taken steps to evict the petitioners.

6. Learned AGP Shri Gori submitted that the representation of the petitioners may be ordered to be disposed of early, however, in the meantime, status quo should be maintained.

7. Having heard the learned advocates appearing for the parties, it would appear that admittedly the building in question as it exists currently is not strictly in conformity with the building plans approved by the Municipal authorities. The petitioners as well as respondent No.4 have indicated their desire to approach the authorities with revised plans and request for

regularisation of the construction. The authorities also under the rules and regulations can consider only such construction which otherwise conforms to the building regulations for regularization. For the above purpose, if the petitioners make a representation with revised plans and necessary materials at their command within one week from today, the same will be taken into consideration by the Committee expeditiously. If necessary, the matter may be referred to the Collector. The ultimate decision that may be taken in this regard will bind all the petitioners and respondent No.4 and upon their concession it is provided that there would not be any individual grievance permitted to be raised such as no individual notice has been given to them. This is of course without prejudice to the rights of the petitioners and respondent No.4 as a group to take legal recourse to the decision that may be taken on their representation in accordance with law.

8. The petitioners have been occupying the building since over two years now. They had been doing small business till the shops were sealed. Remaining 23 shops out of 40 shops in the complex are still unoccupied. Considering all these aspects of the matter, I find that equities would be balanced if the

petitioners are permitted to continue their business during the pendency of the consideration of the representation. However, remaining shops cannot be allowed to be occupied till the building is cleared partially or substantially. It is, therefore, directed that the seals applied to the shops of the petitioners be removed subject to the final outcome of the representation that may be made. This is on condition that no further allotment of remaining 23 shops will be made till the building in the existing form or in the altered form as may be required by the authorities is regularised. An undertaking to this effect will be filed by the petitioners as well as respondent No.4 before this Court within a period of one week from today. This will also be stated in the representation that may be made to the authorities. The petitioners shall not claim any equity by virtue of their occupying the shops pursuant to this order in the final outcome of this litigation.

9. With the above directions, the petitions are disposed of. Rule is made absolute to the above extent with no order as to costs. Direct service.

(Akil Kureshi, J.)

(vjn)